IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13/09/2002

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THE HONOURABLE MR. JUSTICE K.P.SIVASUBRAMANIAM

WRIT PETITION No.2821 OF 2000
and
W.M.P.No.4318 of 2000

T.Sambaingam Petitioner.

-Vs-

1. The Government of Tamil Nadu,
represented by its Secretary,
Home (Cinema) Department,
Chennai – 9.

2. The Appellate Authority and the
Joint Commissioner (Cinema),
Chepauk,
Chennai – 600 005.

3. The Licensing Authority/Collector,
Erode District at Erode.

4. R.Thangavelu

5. R.Balasubramaniam

6. K.S.Maheswaran ..... Respondents

Petition filed under Article 226 of the Constitution of India praying
for the issue of a writ of certiorarified mandamus.

For petitioner : Mr.K.Selvaraj

For respondents 1 to 3 : Mr.S.Manikumar,
Special Govt. Pleader.
For 4th respondent : Mr.S.Elumalai
For 5th respondent : Mr.M.R.Raghavan
For 6th respondent : Mr.N.C.Ramesh

:ORDER

The petitioner seekS to question the rejection of the
application of the petitioners for renewal of 'C' form licence by respondents

1 to 3.

2. According to the petitioners, originally a permanent cinema licence was granted to M/s.V.K.Ramaswamy, T.P.A.Rajappa and A.R.C. Rajammal, all the three being co-owners of the site, building and equipments of Rajaram theatre. In 1976, the petitioner and one Kesavan purchased 50 per cent of the shares in the property and as such from 1976 the petitioners, Kesavan and V.K.Ramasamy are the co-owners and licensee of the theatre along with respondents 4 and 5, being the sons of V.K.Ramasamy. From the year 1976, it is the petitioner who is continuously looking after the theatre inclusive of the day-to-day administration, paying tax etc. Subsequently, on the death of Kesavan, his son, the sixth respondent became co-owner in the place of Kesavan. The licence stood in the name of four co-owners and it was finally renewed from 20.1.1997. (20.1.1997 to 30.9.1999) The petitioner by his application dated 26.8.1999 sought for renewal, but the Licensing Authority insisted on getting signatures of all the owners. By order dated 23.9.1999, the application was rejected by the third respondent and the petitioner filed an Appeal No.184 of 1990 before the second respondent who granted an order of interim stay on 29.9.1999. The petitioner was running the theatre on the strength of the said order and by virtue of the licence under Form 'E'. The appeal was rejected by order dated 5.11.1999. A revision was filed before the first respondent. As no orders were passed in the petition for interim stay filed by the petitioner, he filed W.P.No.19520 of 1999 which was ordered on 8.12.1999 directing the first respondent to dispose of the stay petition within two weeks and the main petition within three weeks. The revision petition was dismissed by the first respondent by order dated 1.2.2000 without giving any hearing to the petitioner and hence the order was vitiated by violation of principles of natural justice. Hence the above writ petition.

3. It may also be mentioned at this juncture that the petitioner had filed Arbitration O.P.No.72 of 1999 on the file of the District Court, Salem, for the appointment of Arbitrators in terms of agreement between parties. The said proceeding was pending. According to the petitioner, in terms of clause 7 of the agreement parties shall not involve in any activity prejudicial to the welfare and development of the theatre and any dispute between the parties shall be referred to arbitration containing five arbitrators.

4. On hearing both parties, the issue which mainly requires to be dealt with is as to whether the application for renewal should be signed by all the co-owners/partners. The other points argued by both sides have really no bearing on the said main issue which requires consideration and hence I am eschewing the said points from consideration. According to learned counsel for the petitioner, the Revisional Authority did not give any hearing and hence the impugned order was violative of principles of natural justice. He would further submit that the Revisional Authority had referred certain documents alleged to have been filed by the fourth respondent and he would contend that no such documents were filed before the first respondent. Learned counsel for the sixth respondent also contended that the writ petition itself was liable to be dismissed as the petitioner had come to Court with unclean hands by stating false facts. This allegation pertains to the

statement of facts by the petitioners relating to the period of interim stay before the appellant/Revisional Authorities as stated not only in the affidavit, but also in the list of dates furnished by counsel for the petitioner. According to learned counsel for the sixth respondent, the writ petitioner had chosen to indulge in wrong statements of fact only with a view to obtain interim orders in his favour and therefore, the petitioner having come to Court with unclean hands,is not entitled to discretionary remedy. In this context learned counsel also referred to some of the rulings of this Court. As stated earlier I do not propose to entertain any of these objections as they are inconsequential for the main issue which arises for consideration in this writ petition.

5. The two issues which arise for consideration before this Court are (1) Whether the relationship between the parties is one of coowners or partnership; (2) whether the renewal application should be signed by all the parties. While the first point is to be decided on an interpretation of agreement, the second point is a legal issue and having given full hearing to the parties on both the said points, it is necessary to deal with the aforesaid points raised by both parties.

6. The controversy between the parties as regards their inter se status namely, as to whether they are co-owners or partners, is projected by the petitioner mainly in an attempt to take advantage of the legal position as to the rights of a co-owner in comparison to the right of a partner deriving his right under a partnership deed. While learned counsel for the petitioner contends that the relationship is that of co-owners, it is vehemently contended on behalf of learned counsel for the sixth respondent, that all the parties are only partners as constituted under a Deed of partnership and governed by the rights and liabilities envisaged under the Partnership Act. As would be evident from the legal issue discussed below namely, the right of one set of co-owners/partners to apply for renewal of 'C' form licence, in the face of the objection by another set of co-owners/partners, this Court has pronounced that while in the case of co-ownership, one set of co-owners being in lawful possession can seek for renewal even if another set of co-owners object to the same. But in the case of partnership, at least two Division Benches of this Court have held that one of the two partners alone cannot seek renewal in the event of another group opposing request for renewal or continuation of the business. The petitioner apparently with a motive to succeed in this writ petition, had sought to describe himself as a co-owner and relies on the rulings of this Court in the context of co-ownership. The attempt cannot be sustained having regard to the very pleadings of the petitioner in this writ petition as well as in the arbitration O.P. filed by himself. Though in the affidavit, the petitioner claims to be a co-owner along with the other parties, in paragraph 9, he has admitted about moving the District Court at Salem for the appointment of an Arbitrator in terms of "unregistered agreement dated 1.4.1992". He has deliberately avoided using the word "partnership" apparently to mislead this Court as regards the true nature of the relationship between the parties in order to take advantage of the consequential legal position as mentioned above. This attempt of the petitioner of suppression of facts cannot be appreciated. A perusal of the Arbitration O.P.No.72 of 1999 filed by the

petitioner himself, discloses that the parties have entered into a Deed of Partnership on 1.4.1992. The petitioner very much relies on the Deed of Partnership and had prayed for appointment of arbitrators in terms of the agreement. Therefore, I am inclined to hold that the parties are governed by the said Partnership deed and therefore, inter se status is only that of partners and not as co-owners as pleaded by learned counsel for the petitioner.

7. Now coming to the question as to whether renewal can be sought for by only one of the parties, the legal position is very clear namely, whatever may be the position as between the co-owners, in the case of partners governed by a Deed of Partnership and the provisions of the Partnership Act, the position would be different considering that a Partnership is nothing but a relationship flowing from a contract depending upon the mutual faith and confidence and such a relationship will cease when once differences arise between the parties.

8. The following cases relied upon by learned counsel for the petitioner, deal with the case of co-owners and not partners"-
(i) THE LICENSEE, SRI LALA TALKIES, VADIPATTY, MADURAI TALUK v. THE DISTRICT COLLECTOR (1999 (I) M.L.J., 526).
(ii) P.SUBBA NAIDU v. THE LICENSEE, SRI LALA TALKIES VADIPATTY & OTHERS (W.A.No.1028 OF 1998 Dated 19.8.1998) (On appeal from the judgment in 1999 (I) M.L.J,526.)
(iii) The judgment in DHASAIYAN v. THE GOVERNMENT OF TAMIL NADU (199 8 (I) M.L.J., 399) deals with a dispute between the co-owners and the individuals who had purchased the share of one of the co-owners.

9. With reference to the disputes between two joint lessees who had obtained licence in their joint names and had agreed to run the theatre in turn for two years each, a Division Bench of this Court in BALASUNDARAM v. GOPALAKRISHNAN (1972 (II) M.L.J., 566) a Division Bench of this court held that no renewal can be granted in favour of only one of the parties while the other was objecting for the renewal.

10. Following the said judgment of the Division Bench, Ratnavel Pandian,J., as he then was, held that co-licensees should join the request for renewal of licence vide, W.P.Nos.1360 and 1387 of 1994 dated 2 2.6.1984.

11. It is true that in the case of dissolved partnership, a Division Bench of this Court went into the question of lawful possession of the one of the partners who had the possession of the theatre and it was held that the person in possession having undivided interest had lawful possession as a joint owner and hence entitled to seek for renewal, vide DHANALAKSHMI AMMAL v. THE SECRETARY TO GOVT. MADRAS-9 (19 93 (2) L.W., 589 = 1993 Writ L.R.,958). Though the judgment of the Division Bench in 1972 (II) M.L.J., 566 cited above, was referred to, the Division Bench merely proceeded further by stating that in view of their conclusion that the partner seeking renewal was found to be in lawful possession, he was entitled to succeed.

12. But the very same Division Bench in a subsequent judgment in M.GANAPATHY v. DISTRICT COLLECTOR, PERIYAR DISTRICT (W.A.No.1471 of 199 4 dated 2.12.1994) was inclined to follow the judgment of the Division Bench in BALASUNDARAM v. GOPALAKRISHNAN (1972 (II) M.L.J., 566), supra. The Division Bench distinguished its earlier judgment in 1993 (2) L.W., 589, supra, on the ground that in the earlier case, the partnership had been dissolved while in the case on hand, the partnership continued. The Division Bench further observed as follows:-

"But, in the instance case, the difference among the partners continue as to running the theatre and they have not decided to sink their differences and continue to carry on the business. No doubt, it may be contended by the appellant that the running of the theatre does not amount to change in the nature of the business, and therefore, the consent of the other partners is not necessary. As long as there is a difference of opinion among the partners even to carry on the object and purpose of the partnership, such difference has to be resolved, because the partnership is nothing but the relationship between persons who have agreed to share the profits of business carried on by all or any of them acting for all. The relationship flowing from the contract depends upon mutual faith and confidence which will disappear or ceases to exist when once the difference arises among the partners to carry on the business of the partnership for which it is formed. Therefore, we are of the view that as there is a difference of opinion or disagreement for continuing the partnership constituted for running a cinema theatre between the partners and that difference will lead to disruption in running the theatre and as such, there will not be smooth running, of the theatre, therefore, the possession of the theatre claimed by the appellant as partner, will not be of any consequences, inasmuch as the possession of the partnership properties are concerned, no partner can claim it exclusively."

13. In FATHIMA GANI AND 2 OTHERS V. THE STATE OF TAMIL NADU, ETC. & 3 OTHERS (1993(3) L.W.,37 - Short Notes), N.V.Balasubramanian,J. dealt with a case of dissolved partnership and the learned Judge held that after dissolution, the relationship would be that of co-owners and hence one co-owner was entitled to be in lawful possession of the property and hence entitled to seek for renewal.

14. In my opinion, the rights and liabilities of the partners, on dissolution also, cannot overreach the provisions of the Partnership Act, and they are bound by the provisions of the Act. Chapter V of the Act deals with the rights and liabilities of the incoming and outgoing partners. Chapter VI deals with the situation after dissolution. Therefore, the relationship between partners is a statutory one governed by the provisions of the Act and the only fact of dissolution cannot place any one of the partners higher or lower than the position envisaged under the Act. Under Section 46, on dissolution every single partner is entitled to have the business wound up and to have the property of the firm applied in payment of the debts and liabilities and to have the surplus distributed among the partners. To hold that the partners on dissolution would become co-owners and one of them being in management can continue to handle the business on his own, would run contra to the very basis of the creation of the partnership and the provisions of the Act especially Section 46. But in the present case it

is not necessary to go into the said issue, considering that it is not the case of the petitioner that the partnership had been dissolved. No such stand has been taken in the Arbitration O.P. also by the petitioner. Therefore, the judgment of the Division Bench in W.A.No.1471 of 1994 cited above, will apply.

15. For the same reasons as aforesaid, I am also inclined to hold that once the law of partnership is applied, the question of the opinion being that of majority or minority of the partners would also become irrelevant. As pointed out by the Division Bench as extracted above, the relationship is based on mutual trust and when once that is broken, one set of partners cannot enforce their will against another set of partners. In this case, the sixth respondent has categorically stated that in view of the conduct of the petitioner allegedly mismanaging the business and showing loss of business for every year, he was not interested in the running of the theatre. It cannot be disputed that even one of the partners would be entitled to express his desire to close down the theatre and the loss of the partnership year after year cannot be thrust on him against his wishes even if he is in a minority. In this case, the sixth respondent is also supported by the fifth respondent while the fourth respondent sails with the writ petitioner. Therefore, the inclination to continue or not to continue the business is evenly divided between the partners.

16. I am also inclined to hold that the possession by the petitioner is also a litigious possession, he himself having moved the Civil Court for appointment of the Arbitrator. It is true that the petitioner is an equal partner along with three others. But when one of the partners does not want to continue the business, and wants the business to be closed down, another partner cannot legitimately claim to be in management of the property. For the same reason, it cannot be held that he is in lawful possession when admittedly misunderstandings have arisen between the partners and the petitioner himself had approached the Civil court for appointment of arbitrators for resolving the disputes. The petitioner himself had alleged that the 6th respondent was acting against the interest of the partnership and the running of the theatre had become impossible and there has been severe differences of opinion between the partners. If so, it is inconceivable as to how only one of the partners can be stated to be in lawful possession and be entitled to continue the business.

17. The stand of the authorities/respondents 1 to 3 is also supported by the instructions of the Government in Board's Reference L.3/223 8/78 dated 18.4.1978 which is as follows:-
"While examining an appeal petition the Board has an occasion to note that though the 'C' form licence stood in the name of the partners, all along the application for renewal had been signed by one of the partners/some times/ and by even the manager of the theatre. If this is the case, the licensing authority should have held that an application for renewal filed by the Manager was not valid. It is the licensee who should apply for the renewal. If the licence is held the names of number of persons, all of them should jointly apply for renewal and the absence of signature of any one of a number of Co-licensees will make the application for renewal invalid.

2. The Collectors of all districts except Madras and the Commissioner of Police, Madras, is therefore requested to ensure in future that applications for renewal of 'C' form licence are signed only by those in whose names the licence stands. If the licence is in more than one name, all of them should sign. It is necessary that they should also file an affidavit stating that they continue to be in possession of the site, the building and the equipment and they have not entered into any transaction affecting the possession of their rights. The Collectors of all districts except Madras and the Commissioner of Police, Madras, are requested to adhere to these instructions strictly in future."

18. From the stand point of the Revenue, the authorities are certainly entitled to issue and follow such instructions which are aimed at in the interest of proper and smooth functioning of the Cinema houses and the State being unnecessarily dragged into litigation between the private parties and the resultant loss of revenue due to inter se dispute between the joint owners, partners etc.

19. I had adjourned the hearing of this writ petition on few occasions to give time to the parties to settle their disputes either by way of sale of the shares between themselves or by management in rotation so that the business need not be closed down pending the conclusion of the disputes. But the parties have not been able to come to any agreement.

20. Therefore, viewed from any angle I see no reason to interfere with the impugned order. The writ petition is dismissed. No costs. Connected miscellaneous petition is closed as unnecessary.

Index: Yes. 13.09.2002
Internet:Yes.
Sai/-

To
1. The Secretary,
Home (Cinema) Department,
The Government of Tamil Nadu,
Chennai – 9.

2. The Appellate Authority and the
Joint Commissioner (Cinema),
Chepauk,
Chennai – 600 005.

3. The Licensing Authority/Collector,
Erode District at Erode.

K.P.SIVASUBRAMANIAM,J.

By virtue of interim order dated 03.03.2000 passed by this Court in WMP No.4318/2000, it is represented that the petitioner was directed to deposit a sum of Rs.25,000/- to the credit of the suit OP 72/1999 on the file of the II Addl. District Judge, Salem, every month. In compliance of the said order, the petitioner has been depositing at the said rate. It is also represented that a total sum of Rs.7,25,000 /- is lying to the credit of the said suit.

2. Each of the four partners are permitted to withdraw one fourth in terms of their share in the partnership and they are permitted to move the II Addl. District Judge, Salem, for withdrawal of their respective share of the amount in the said portion.
vv. 13.09.2002

Order in
W.P.No.2821 OF 2000